Exhibit 1

STATE OF NEW JERSEY
DISTRICT OF NEW JERSEY

IN RE: INSULIN PRICING LITIGATION	**CIVIL NUMBER:** **2:23-md-03080-BRM-RLS** **ORAL ARGUMENT ON CONSTRUCTIVE NOTICE AND STATUTE OF LIMITATIONS ISSUES**

Frank R. Lautenberg Post Office and United States Courthouse
Two Federal Square
Newark, New Jersey 07102
July 9, 2025
Commencing at 11:00 a.m.

B E F O R E: **THE HONORABLE BRIAN R. MARTINOTTI**
UNITED STATES DISTRICT JUDGE

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I N D E X

I N D E X T O E X H I B I T S

THE COURT: So did I just waste everybody's time and trees by doing this, by just saying: We can't decide it at this stage of the litigation? See you in four years once we're ready to do summary judgment?

MR. WIDLANSKI: I certainly hope it's after the four years, Judge. No, I don't think you did waste anybody's time because I think this is an important exercise.

Because I think it is important, and Your Honor is going to and should give guidance to the parties about what it looks like, what that notice might look like. How the storm warnings can be dissipated. What storm warnings apply?

THE COURT: Because I don't need plaintiff-specific facts to determine what I deem the date of constructive notice is. Correct?

MR. WIDLANSKI: Yes and no, Judge, because a large part of the constructive notice test under *Mathews* and under a whole host of cases are individual reassurances that dissipate the storm warnings.

What was said by Express Scripts to Albany, CVS to Lake County? What did they say? What did they tell them? That's not the due diligence analysis, Judge. That's the first step. That's the storm warning step.

Only once Your Honor is satisfied that the storm warnings apply, do we move to the second step. And that's the due diligence analysis that Mr. Moorman was talking about.

We agree with the general framework, two-step process. But the first step is incredibly fact specific. They have been making reassurances for decades. Do their statements rise to the level of storm warnings as to each and every plaintiff on this side of the table?

Judge, we're talking about plaintiffs as varied as the great state of California, and Monmouth County. The case law is very clear that when you look at storm warnings, you look at how they apply to individual plaintiffs in their individual situation.

California is obviously differently positioned than Monmouth County, who is differently positioned than Local Steamfitters Number 3. These are different entities with different sophistication levels. They're different posture, differentially positioned. And they have different access and ability to secure information as part of this process, Judge.

When a human resources department of a small county or town engages in an RFP, they have every right to trust what is in that response. And let me -- I don't want to get too far ahead of myself, Judge.

United States Congress and the FTC are still not analyzing the timeline of the defendants. They are still themselves -- the greatest deliberative body in the world is still not sure --

THE COURT: Maybe.

MR. WIDLANSKI: Maybe, Your Honor. Well, they put you on the bench, so they did something right.

But the greatest deliberative body in the world is still not sure what's happening over there on that side of the table.

So to say that Monmouth County, California, and Local No. 4 could have or should have known of this conduct in 2016, Judge, it's simply putting the cart before the horse and it's too soon. Not to say that we never can; it's just too soon.

THE COURT: So little bit of housekeeping. The fire alarm is being tested at noon. No need to evacuate, you can stay here, and we will not get a demerit from the marshals for not evacuating.

Correct?

Okay.

MR. MOORMAN: Is that your way of keeping us to an hour, Your Honor?

THE COURT: You've already eaten up about 20 minutes of your time.

So please disregard the fire alarm at noon. Not the one at 12:01.

Do you have anything you want to say in response to any question I asked or in rebuttal to anything counsel said? If the answer is yes, I'll hear you. If not, then you can go on to your argument.

The question is not could you have discovered and proven your claim. Right? We don't hold plaintiffs to the standard of filing a lawsuit once they're certain to win. The standard for *Merck*, the Third Circuit and other Third Circuit cases is, would the investigation have yielded enough facts to survive a motion to dismiss. Right?

We don't have to hypothesize here whether there were enough facts in the public domain to survive a motion to dismiss. The 2017 lawsuits brought by consumers, brought by the State of Minnesota, brought by health plans like MSP Recovery did file lawsuits alleging an insulin pricing scheme based on the storm warnings that existed in 2016 and they did survive motions to dismiss before Your Honor. That's all that is required under the Third Circuit law here.

Your Honor, I don't want to rehash all the exhibits in our brief. We have an appendix detailing all of the examples where the insulin pricing scheme -- the alleged insulin pricing scheme was discussed in the public domain. That would take me literally hours to do. I'm sure you and your clerks have spent quite a bit of time going through the voluminous submissions we made.

But as you can see on Slide 4, we just highlighted some of the publications that we're discussing the key allegations that plaintiffs make in their complaints now. It's such a stark contrast to the cases that plaintiffs cite in

their briefs.

This is not a situation where there was niche trade journals or online blogs reporting about this. This was reported in the New York Times, the Philadelphia Inquirer, PBS, CBS, Politico, NBC. These were the loudest storm warnings in any case that we've seen evaluated within this circuit.

I want to focus on a couple of, I think, the most prominent storm warnings here.

If you go to Slide 5, Your Honor, this is the New York Times Op-Ed "Break Up the Insulin Racket." And I don't think there's any disputes that, at least I don't understand there to be a dispute, that the public reporting was reporting that insulin prices were increasing; that what was driving the increase in insulin prices were the rebates that plaintiffs -- that PBMs demanded from manufacturers, and that manufacturers were allegedly retaining -- PBMs were allegedly retaining a portion of that spread between the list price and the net price.

What I hear from, particularly the self-funded payers, is that last part: Well, that wasn't clear from the storm warnings. That's just belied by the articles we cited in our brief.

You can look at the New York Times article on Slide 5. It says that what's driving the increase in insulin prices are rebates demanded by PBMs. It says that these look suspiciously

similar to kickbacks, something with which we disagree with but that plaintiffs have alleged in this case.

And then it says exactly what the self-funded payers allege in this case: it's not clear whether these savings are passed along.

It also gives an example of a payer, just like the self-funded payers in the self-funded payer track, who's made that allegation that Express Scripts, one of the defendants in this case, wasn't passing along the rebates that the payer claimed they were entitled to.

That is, on all fours, the allegation that the self-funded payers make in this case, loud and clear in one of the most prominent publications in the country.

The Philadelphia Inquirer, on the next slide, said the same thing: savings are not necessarily passed on to the client, that's the payer, much less the patients.

And if you go to Slide 7, the Boston Globe, it's virtually verbatim with the allegations in the complaints.

In contrast with drugmakers, a PBM may classify a rebate it has negotiated as a type of fee, allowing the PBM to keep it, rather than pass it on to the client because the payers allege they get rebates. That's exactly what the self-funded payers are alleging in this case.

Your Honor, as you read the cases on constructive notice, the exercise the Court ordinarily undertakes is an

MR. LISTON: I will suggest, though, to Your Honor that you cannot avoid applying the discovery rules that exist under the law of each of the states. And those discovery rules require factual knowledge by a plaintiff as to the elements of the causes of action alleged.

Now, one of those elements, and I would suggest to the Court the essential element in this case, is the one of causation. That's going to be the one, I believe, that presents the biggest question for a jury. Causation.

That is why it is our position that the Senate insulin report issued on January 14, 2021, has so much value. It has value for several reasons.

The first thing is, who the speaker was. Credibility, ethos, if you want to call it that. It was a bipartisan Senate committee that issued the statement. It was not a report done by one of the defendants whose profits happened to be threatened by these claims or by an industry trade group that may be connected to the defendants and biased in their favor.

And, second, the Senate insulin report was based on actual evidence, not news articles by commentators without data, speculating on what the causes of the insulin price increases are. The Senate committee obtained the defendants' own documents, analyzed those documents, and then issued a report with its findings based on the content of the defendants' documents.

And I am unaware, despite everything -- exhibit, everything the defendants cite, of any instance prior to January 2021, where information that exists in the defendants' documents made its way into the public domain.

THE COURT: So I'm hearing you that that's the date of constructive notice?

MR. LISTON: If the Court is to choose a date, it's the states' position that January 14, 2021, is the earliest possible date. And it is significant also because it is the date that revealed that all of the assurances -- and there is just as an extensive a record of reassurances, misdirection, propaganda, that emanated from the defendants, all of which happens to be false, and we know it's false now, it was all dispelled by the Senate insulin report, including the argument that some legitimate market force was at play, driving insulin prices skyward. So that's why we think it has tremendous value.

Now, on the date that the defendants advocate, November 3, 2016, to be quite candid with the Court, I and the state suggest that it is rather nonsensical to pick a date where governmental inquiries into this issue began, where they began, and not the date that the governmental inquiry had obtained enough information, verifiable information, because it came from them, in which to issue what its findings were.

I know Minnesota filed an early case and I've read

that complaint very closely. Minnesota had great instincts. It knew there was a problem somewhere, but it didn't allege what actually was going on. It did not allege what the Senate insulin report revealed, which was collusion between these two sets of defendants to build a pricing system that was intentionally designed to prevent competition on the price of the drugs and to always force the price higher, which is the primary thing the states contend constitutes a prohibited trade practice. So it just didn't see that part of the picture; it only saw half of the picture.

I suggest that Minnesota case does not provide any other state with enough notice, because states, under their discovery rules, require actual knowledge of the evidence of what the causation is.

I have heard a lot of comments about constructive notice being an objective inquiry, but the attorneys who have made those comments proceed to view the exhibits they have offered in a completely subjective way.

Their own exhibits are filled with reassurances. Those reassurances were contemporaneous with whatever the commentator of the writer of the article was saying to the point that once you read those exhibits, which I have, they leave you quite confused about who was telling the truth and what is really causing these problems.

I went through, in preparation for this, and just

picked out a few things. And at the end of reading everything they offered to the Court in the way of an exhibit, I am convinced there was a tremendous controversy about this issue. But that's all I'm convinced of, because I couldn't reach any conclusion about the real cause until January 2021 when the government spoke to the issue.

But here's just a few gems from the defendants in the same mix of information that they're citing today.

In 2004, the PBMs were sued by the New York Attorney General. Their retort to that publicly was that these are meritless allegations. We have saved the state of New York $2 billion over the last 10 years.

In 2015, Novo Nordisk blamed insulin price hikes on increasing demand, which we now know because of the Senate report that was not the case.

In 2016, all the manufacturers contended that the insulin price hikes were necessary to fund the research and development, and they made that statement over and over throughout the period we're talking about. We now know, because of the Senate insulin report, that that was not the case.

In 2016, Express Scripts started the blame game by pointing the fingers at the manufacturers saying they have, quote: Broken a historical social contract to price their products reasonably.

In 2016, multiple times thereafter, Eli Lilly came up with this argument, it doesn't really make any sense, blaming the prices that they set for their products on changes in insurance plan designs and higher deductibles, and they repeated that argument over and over for a number of years.

In 2016 and thereafter, there was a constant refrain from the manufacturers. And they still say it today; you heard it today that, despite the list price increases in insulin, their net prices have not increased. They have stayed flat. They have remained the same.

Your Honor, that's completely false. And we know it's false now. And we began to appreciate how false it was when we read -- guess what? -- the Senate insulin report which addressed that very issue.

And now that we have their data in the case, we know it's absolutely false, because it's contrary to their own data. There were blanket denials in 2016 about the Senator Sanders/Representative Cummings letter which it was the initial request for a government inquiry.

In 2017, the defendants responded with denials and words like "false premise" to the initial insulin lawsuits that were filed in this district.

THE COURT: All of this, doesn't that give rise to storm warnings?

MR. LISTON: According to the *RenovaCare* case in this

court, it has the opposite effect. It dissipates the storm warnings.

And what it does is it leaves someone trying to determine whether or not they have a viable claim or a state trying to determine can it prove all of its elements, including causation, utterly and thoroughly confused. So a state would have to take a risk, like Minnesota did, that, yes, it identified a real problem but it really didn't know what was causing it.

They have offered a lot of exhibits, 80 some-odd exhibits. I would represent to the Court that the record of their reassurances, which are false, are misrepresentative, are meant to misdirect the public about the cause of this problem, is extremely extensive; it's more extensive than any of the cases I have read that discuss dissipation of storm warnings, and it's apt reason for Your Honor to view them as completely offsetting any storm warnings that arose prior to January 2021.

Thank you.

THE COURT: January 14, 2021? No? Yes?

MR. SCHORK: The class tracks' position is that January 14, 2021, is the earliest possible date that the Court could find to be a constructive notice date.

So while I begin, I want to take a step back. I know that my colleague noted and referenced the fact that we are at the 12(b)(6) stage, and so the burden is extremely high for a

ruling like this. I think the law in this circuit is clear that dismissal is only warranted when the facts are so clear from the face of the complaint that reasonable minds cannot differ, that the plaintiffs reasonably should have been aware of the storm warnings.

THE COURT: But I could do a two-step. I can say this is the date. Now let's address plaintiff-specific investigation or inquiry.

Right? Or not even?

MR. SCHORK: You can make a finding based upon the complaints, the exhibits thereto, matters in public record or documents that are integral to the complaint, based upon constructive notice. The issue today is whether we pled ourselves out of court.

I know the defendants have pulled dozens and dozens of articles over a 15-year time period. The vast majority of those -- I know we handled this in our supplemental brief -- are totally irrelevant to the issue with class plaintiffs. I think they identified one article that was cited in our complaint, which in and of itself was insufficient to put anybody on notice of anything.

Now, to take another step back, for RICO claims, which I think is the focus of a lot of today's argument, RICO claims accrue, and constructive notice is consistent with this, at the time of damage. So constructive notice is when somebody should

designed by the PBM conglomerates that exist in large part to funnel money into the PBMs' pockets and to simultaneously allow the manufacturers to avoid public scrutiny.

So, Judge, why does this matter in the context of a constructive notice argument? Why am I talking about this today?

Because the scheme itself is not simply about raising the prices of insulin causing the consumers, the plans, the states different harms, but harms all the same, and accruing massive monetary benefit for the PBMs and manufacturers.

That's not all the scheme is about. The scheme is also about doing so in a manner that defies understanding and explanation. The scheme itself is intended to cover its own tracks. It's intended to prevent exposure.

Judge, on the first slide I have there, this is of last year.

(Fire alarm system test announcement.)

MR. WIDLANSKI: I don't think the alarm likes my argument, Judge.

THE COURT: Go ahead.

MR. WIDLANSKI: Judge, on the first slide you see, this is of last year, the New York Times published an article titled "The Opaque Industry Secretly Inflating Prices of Prescription Drugs." This is in June of 2024, almost exactly a year ago.

And this article, Judge, was the first time that the rebate aggregators -- I believe Ms. Broadway Brown called them the GPOs, which are a big part of this case, this is the first time getting any degree of public notoriety. And it was worthy of a headline in the paper of record, the most well-resourced investigative unit in the country. That's a year ago.

And not just the media, Judge, has a hard time seeing what is going on. The 2021 Senate report that my colleague Mr. Liston mentioned has a footnote where it says they didn't receive full and complete compliance in discovery. They sent out subpoenas and they weren't fully and adequately responded to.

The FTC last year said the same thing, Judge. If you turn to the next page, the FTC actually did file a complaint, right, in September of last year, September of '24. And that complaint, in many respects, tracks the allegations in this case against the PBMs.

Judge, let's talk about this case, because that is why we're here of course.

THE COURT: But aren't you conflating notice and knowledge versus conclusions? In other words, the Senate had a report, a conclusion. They didn't get all the information. The New York Times then prints an article.

But doesn't that belie the fact that the facts were out there -- Minnesota was ahead of the curve -- that a

reasonable person should have known? With all this reporting, all this press, Senate investigations, Senate reports, shouldn't a reasonable person have known?

MR. WIDLANSKI: Well, Judge, I think there are a few questions inherent in your question. The first is, what is a reasonable person? But more importantly, what were they saying?

Mr. Liston and Mr. Schork both mentioned reassurances. Judge, I disagree strongly with the suggestion that reassurances are part of step two of the *Mathews* test. The reassurances are part of step one.

Because if there are storm warnings that exist in a vacuum, and then simultaneously, every time there is a storm warning there's an equal and opposite reassurance from the defendants in the media, from -- they published the Carlton report, which is an expert report they paid for and now they won't give us access to in discovery, that says they're doing nothing wrong.

Judge, they're out there on their soapbox.

THE COURT: Aren't you arguing the merits versus -- they say X, we say Y. You should know --

(Fire alarm system test announcement.)

THE COURT: Shouldn't that raise an inquiry as to -- or at least start an investigation, hey, something is going on here? And for all we know --

on my PowerPoint.

THE COURT: I knew I shouldn't have given you a break.

MR. WIDLANSKI: I would have gone back, Judge. It's somewhere in there.

Judge, I think it's important to note that the vast majority of the cases cited by the defendants are securities cases. They're not RICO cases; they're not antitrust cases.

And that's important. Reasonable investors are differently situated than reasonable plaintiffs. The *Processed Egg Products* litigation identifies this as an issue. Right?

There are -- there is in fact the case, the *Landy* case from SDNY, where a securities claim was kicked on a constructive notice issue but the RICO case survived.

And this is important, Judge, because, and *Mathews* identifies this, the difference is subtle but in some cases it can be dispositive between RICO and securities. And here, I don't think it's that subtle.

In securities cases, investors, people that are putting their money into things, they're buying something. They're supposed to be reading prospectuses.

THE COURT: Who are the plaintiffs here?

MR. WIDLANSKI: The plaintiffs? Well, that's a very good question, Judge. There's a lot of different kinds of plaintiffs.

THE COURT: Are you saying that the states and the

managers are not sophisticated as contrasted to Mr. and Mrs. Jones?

MR. WIDLANSKI: That's not what I'm saying, Judge. What I'm saying is that each one is differently situated and there's an individualized inquiry. And that's on the next couple of pages, Judge. There's an individualized inquiry.

Yes, it's true that this is an objective standard. But it's an objective standard that is fact-intensive and it's an objective standard that depends a lot on how the individual plaintiff is situated.

I do think, Judge, that there is a difference between the HR director of a relatively small county or town and the HR benefits coordinator for Walmart, say. These are people in different postures. These are people with different access to information. These are people with different priorities.

The County of Monmouth, who is a plaintiff in this litigation, does not have the wherewithal, frankly, Judge, to devote resources that Aetna or Walmart does. And so there is a different situation.

And, Judge, all of this is just what the Third Circuit is telling us -- and this is on Slide 5 -- that it's a fact-specific and individualized analysis. *Dongelewicz*.

THE COURT: Isn't that almost like discrete, a step two? Step one is just, what's the date? Now let's talk about Walmart versus Monmouth or California versus Monmouth County.

MR. WIDLANSKI: Judge, how do you find what that date is? You find that date by looking at storm warnings sufficient to put a reasonable plaintiff on notice, and the reasonableness of the plaintiff depends on what kind of plaintiff you are talking about.

THE COURT: That's the specific inquiry. That's --

MR. WIDLANSKI: Step one.

THE COURT: -- step one is the date is today and you are going to argue that, well, my plaintiff should have known because they thought the fire alarm was for real and they never came into the hearing; therefore, it's not their -- well, let's assume four years ago. So, yes, I think we're getting plaintiff-specific versus objective.

Do you disagree with that?

MR. MOORMAN: Your Honor, plaintiff-specific, I think the plaintiffs had it wrong for a more fundamental reason.

THE COURT: Objectively. I think I asked you this question in the argument he's making. The objective answer is this is the date. Now some plaintiffs may come back and say: We did a reasonable inquiry, diligent inquiry, and this is why we didn't file within this date.

MR. MOORMAN: Yes, that's exactly what *Mathews* said.

MR. WIDLANSKI: No, it doesn't, Judge. You are quite intuitive. Cases that the defendants have cited, like *Grant Heilman*, which is on page 6, Judge, say that the test for storm

all about the list prices. Taking the self-funded payer track slightly separately from everybody else, we don't pay the list prices.

So all these articles, all these articles that say list prices are going up, Mr. Cecchi's complaint in 2017, that was about consumers paying the list price. The self-funded plans.

Monmouth County and Walmart don't pay list price; they hire the PBMs. They hire them because the PBMs tell us that it's their job to get us the best prices.

Judge, that's what we're talking about here. We're talking about a situation where the defendant PBMs particularly are saying: It's our job to get you the best prices. Yeah, we know list prices are going up but it's our job to make sure you guys aren't harmed. They're still saying that, Judge. They're still saying that today.

That's why -- and they're still doing what we're complaining about. That's why separate accrual is important, because they're still committing the misconduct. Judge, even if you do find 2021 as the date, Judge, if you find 1900 as the date that we are all supposed to be on notice, every plaintiff plan that files tomorrow has a four-year lookback period under separate accrual because they're still committing the misconduct. They're still doing it.

Now I don't think you can find 1900. I don't think

you can find 2021 because of the reassurances. Think about what happened at the Senate report, at the Senate committee. You have the CEOs, the C-suite, the leadership of these companies standing up and saying nothing to see here. Nothing to see. And then you are in the position about, that *DaimlerChrysler* speaks about on Slide 8 here, Judge.

(Fire alarm system test announcement.)

MR. WIDLANSKI: *DaimlerChrysler* says defendants are seeking to punish plaintiffs, trusting their word. That's exactly what we're here about. Mr. Liston mentioned this.

If you go to page 9, Judge, they are taking out articles, taking out ads in the New York Times and the Wall Street Journals. The very same journals, the publications that they gave you a chart about, they're taking out ads: We're pharmacists. We're clinicians. We're researchers. We're negotiators. We're caregivers. That's not a middleman, that's an advocate.

Now, Judge, I don't have great eyes, and this print is kind of small: We're 18,000 advocates who take pride in being the last line of defense for millions of Americans against rising health costs.

This is a perfect example of why reassurances dissipate storm warnings. They are telling us, simultaneously, you should have sued us a decade ago, and we're helping you.

That's hutzpah. That's nothing but hutzpah, Judge.

The articles they cite, if you go to page 10 -- Mr. Liston did a great job talking about this -- the articles they cite, all of them contain reassurances. Page 11, same thing, they contain reassurances.

The storm warnings that they talk about, about how list prices are going up, which again is self-funded plans don't pay, list prices are going up, the same articles have reassurances. And they're not just making these reassurances Judge, in the vacuum, in the ether. They're saying it to our clients. And I've talked about that on page 12.

Judge, you talked a lot about Mr. Schork, or Mr. Schork talked a lot about --

(Fire alarm system test announcement.)

MR. WIDLANSKI: Judge, the prior lawsuits were about list prices and what people paid, the list prices.

THE COURT: Go ahead.

MR. WIDLANSKI: The prior lawsuits were about list prices where people were paying for list prices. Prior lawsuits were not about mislabeling; they were not about the rebate aggregators. The PBMs were not defendants. Yes, they were mentioned in one suit but they were not developed. And that's what this is all about, Judge. This is about developing facts. It's about the creation of a record.

I mean, I don't want to get too far into the 2016 letter. I mean quite frankly, Judge, a letter that

Senator Sanders saying, Hey, you guys need to look at this big company, they're making too much money, probably not that unique, probably not putting that many people on notice of anything.

And it is worth noting, by the way, that the FTC eventually did bring a case. Right? They did bring a case against the PBMs last year in 2024, in September of 2024, and that's a law enforcement entity. Right? They have subpoena power. They have the ability to go out and get stuff.

THE COURT: Is that the date?

MR. WIDLANSKI: That could be a date, Judge. I would be okay with September of 2024.

THE COURT: All right.

MR. WIDLANSKI: I don't think, again, I don't think you can do this right now because of the individualized nature of this. But if you say, gun to my head, Mr. Widlanski, can I give you that date? I'll give you that date.

Of course they've talked about due diligence. Right? That's another individualized issue.

But tolling, Judge, they have mentioned tolling briefly. I think it's important to talk about that just for a moment. There are a lot of different complaints in this case with different state law and tolling is going to be different under each of them. Maybe there's *American Pipe* tolling with the class case. There's a lot of tolling going around here,

and, yeah, that's not necessarily part of the constructive notice piece but that is still an important part.

THE COURT: That's part two.

MR. WIDLANSKI: Actually I think that would be part three, but yes.

THE COURT: Okay.

MR. WIDLANSKI: But, yes. The point is, Judge, the constructive notice date right now, without full discovery, is not necessarily going to be as useful to the parties and the Court as a constructive notice date at some point in the future after discovery has been more fulsome and everybody knows what the lay of the land looks like.

THE COURT: What's discovery going to tell us?

MR. WIDLANSKI: What do they tell us? What do they say? What were they trying to say? Were they hiding things, Judge? I mean, we've asked for custodial files from their public relations departments. We have third-party subpoenas with Pharma and PCMA, their trade groups.

We want to know what the messaging platform or the strategy was. Well, how much were they trying to hide? What were they trying to hide? Why were they trying to hide it? When did they decide they should start trying to hide it? Those are all incredibly important facts, Judge, that are relevant to this inquiry.

We talked about separate accrual. I don't want to

talk too much about it. It's on page 17. I just think it's important to note that separate accrual absolutely plays a role here.

So, Judge, I think I'm almost done unless the alarm goes off again. I do want to be clear what I'm not saying, because I've said a lot but I want to be clear what I'm not saying, and I'm not suggesting that there's no possible dates that we can find, that Your Honor can find at some point in the future once the record is more developed.

It's an incredibly fact-intensive analysis. The Third Circuit says that. It's generally inappropriate on a motion to dismiss for all the reasons that my colleagues and I have discussed.

And on the face of these complaints, Judge, on the face of these complaints, looking at the articles they have cited and the reassurances that are in the articles they have cited, it's impossible, Judge, to say that there were storm warnings. It's impossible to say that all of the plaintiffs were equally aware of all the storm warnings, Judge.

You know, I'm -- they're still, to this day, taking out these news articles. They're still defending the Carlton report. They're saying these things for years. And now that a group of plaintiffs, plans, unions, states, have had the wool pulled from their eyes and now see clearly, they have the audacity to come in and say -- and it is audacious to come in

say you don't have to file a lawsuit until you get civil discovery. The Third Circuit is, you just have to -- the statute of limitations begins to run when you have inquiry that an investigation is warranted.

On the plaintiff-specific differences between the plaintiffs in the self-funded payer tracks. Plaintiffs' counsel for the self-funded payers put a lot of emphasis on Walmart versus Monmouth County. That argument was considered and rejected by *Mathews*.

This is what the *Mathews* court said expressly: We reject the proposition that unsophisticated investors should be held to a lower standard than sophisticated investors. That totally dispels that argument, and that's what *Mathews* says when it talks about the objective inquiry.

Your Honor, I think you were getting at this point with one of your earlier questions, but if consumers could figure this all out and file a lawsuit in 2016, why couldn't municipal governments? Why couldn't big city governments? Right? It shows that there was sufficient information to conduct an inquiry.

Your Honor, Your Honor I think is familiar with the cases we cited in our brief that go to an earlier point I said. Plaintiffs don't need all of the details before they are obligated to file their lawsuit without the limitations period. It's notice inquiry. It's enough facts to file a complaint,

not prove liability.

And then, finally, Your Honor, just on this overhang of discovery. Nothing is going to change the objective step one inquiry with any discovery. The New York Times said what the New York Times said. Bernie Sanders wrote what he wrote. The complaints filed in this courtroom were filed in this courtroom.

Now in step two, if a plaintiff wants to say, 'Notwithstanding those storm warnings I ran into hurdles as part of my investigation,' they have not made that showing. They can make that showing. But there's nothing that is going to change the record on step one.

Thanks, Your Honor.

THE COURT: Counsel, go ahead.

MR. WIDLANSKI: Just one point, Judge.

THE COURT: I saw the yellow pad.

MR. WIDLANSKI: I'm not going to read it, Judge.

Mathews was 2001 and it was talking about securities cases. It was talking about investors. *Dongelewicz*, which is 2004, also the Third Circuit, different circumstances, still required extremely fact-specific and individualized. That's it, Judge.

MR. MOORMAN: That's a class certification decision. *Dongelewicz*, that's not a constructive notice case.

MR. WIDLANSKI: I don't know about that.

THE COURT: Thank you very much for a spirited argument. I would invite, if you want, a five-page supplemental to be filed no later than next Friday.

MR. WIDLANSKI: Judge, for clarity, that's five pages --

THE COURT: Five pages on that side and five pages on this side. Ten for me to read. No exhibits.

MR. WIDLANSKI: None from us.

THE COURT: Just a regular font.

Anything further?

MS. WALSH: Judge, for clarification, anything in particular you would like us to address?

THE COURT: Whatever they think is warranted.

MS. WALSH: Great, thank you.

THE COURT: Counsel, thank you very much.

For the clients that are here, you've been well served by your lawyers.

I appreciate your preparedness and your advocacy and yet civility. You were smiling back and forth during the arguments and I appreciate that. And I apologize for the fire alarms.

Thank you very much.

(Proceedings conclude at this time.)

FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ Tammera M. Witte, CCR, CRCR, RMR Dated this 07/10/2025

Official U.S. District Court Reporter